

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
BRIAN AMBOS and JOEL HODGES,

Plaintiffs,

-against-

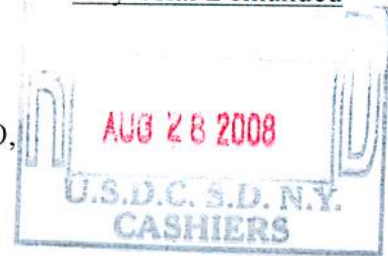
**AMENDED  
COMPLAINT**

08 CV 1276 (VM)

Jury Trial Demanded

CITY OF NEW YORK, DENNIS BRADLEY, UNDERCOVER  
POLICE OFFICER NUMBER 29103, UNDERCOVER POLICE  
OFFICER NUMBER 7327, ERNEST LEIPER, JOSEPH OQUENDO,  
DAVID LEVINE, ROBERT LOTUFO, PETER COSTA, and JOHN  
and JANE DOES 1 through 10, individually and in their official  
capacities, (the names John and Jane Doe being fictitious, as the true  
names are presently unknown),

Defendants.  
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Plaintiffs BRIAN AMBOS and JOEL HODGES, by their attorneys, Leventhal & Klein,  
LLP, complaining of the defendants, respectfully allege as follows:

**Preliminary Statement**

1. Plaintiffs bring this action for compensatory damages, punitive damages and attorney's fees pursuant to 42 U.S.C. §§1983 and 1988 for violations of their civil rights, as said rights are secured by said statutes and the Constitution of the State of New York and the United States. Plaintiffs also assert supplemental state law claims.

**JURISDICTION**

2. The action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution.

3. Jurisdiction is found upon 28 U.S.C. §§1331, 1343 and 1367.

**VENUE**

4. Venue is properly laid in the Southern District of New York under 28 U.S.C. § 1391(b), in that it is the District in which the claim arose.

### **JURY DEMAND**

5. Plaintiffs respectfully demand a trial by jury of all issues in the matter pursuant to Fed. R. Civ. P. 38 (b).

### **PARTIES**

6. Plaintiffs BRIAN AMBOS and JOEL HODGES are citizens of the United States, and at all relevant times, residents of the State of New Jersey.

7. Defendant CITY OF NEW YORK was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

8. Defendant CITY OF NEW YORK maintains the New York City Police Department, a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the applicable sections of the aforementioned municipal corporation, City of New York.

9. That at all times hereinafter mentioned, the individually named defendants, DENNIS BRADLEY, UNDERCOVER POLICE OFFICER NUMBER 29103, UNDERCOVER POLICE OFFICER NUMBER 7327, ERNEST LEIPER, JOSEPH OQUENDO, DAVID LEVINE, ROBERT LOTUFO, PETER COSTA and JOHN and JANE DOES 1 Through 10, were duly sworn police officers of said department and were acting under the supervision of said department and according to their official duties.

10. That at all times hereinafter mentioned the defendants, either personally or through their employees, were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State or City

New York.

11. Each and all of the acts of the defendants alleged herein were done by said defendants while acting within the scope of their employment by defendant CITY OF NEW YORK.

12. Each and all of the acts of the defendant alleged herein were done by said defendants while acting in furtherance of their employment by defendant CITY OF NEW YORK.

### **FACTS**

13. On November 10, 2006, at approximately 3:15 a.m., plaintiffs BRIAN AMBOS and JOEL HODGES were lawfully in the vicinity of 8<sup>th</sup> Avenue at 43<sup>rd</sup> Street, in the City, County, and State of New York.

14. At the aforesaid time and place, the defendants, members of the New York City Police Department, unlawfully and without justification assaulted, battered and beat plaintiff BRIAN AMBOS by intentionally bumping into him, grabbing plaintiff and striking him numerous times, causing plaintiff to fall to the ground. While on the ground, the defendant NYPD officers continued to strike plaintiff on his head and body. Plaintiff was thereafter arrested unlawfully and without reasonable suspicion or probable cause. Defendants intentionally placed excessively tightened handcuffs on his wrists and refused to loosen the cuffs despite AMBOS' complaints that they were tight. Plaintiff AMBOS was taken in police custody to Bellevue Hospital for the injuries inflicted by the NYPD officers, which included, without limitation, facial trauma, lacerations, hematomas, bruising and substantial pain, where he received emergency medical treatment for his injuries.

15. While detaining AMBOS against his will in police custody, the defendants

conspired together to concoct bogus felony charges to cover up their abuse of authority and acts of brutality. The purported felony charges were conveyed to the New York County District Attorney's Office for the purpose of initiating a prosecution against plaintiff BRIAN AMBOS and covering up the aforementioned physical abuse. Plaintiff BRIAN AMBOS was detained for approximately two days, and thereafter maliciously prosecuted by defendants and forced to defend the baseless charges until the charges were dismissed and sealed on or about February 26, 2007 via the motion of the New York County District Attorney's Office.

16. All of the above occurred while the other NYPD defendants failed to intervene in the illegal conduct described herein.

17. At the aforesaid time and place, the defendants, members of the New York City Police Department, unlawfully and without reasonable suspicion or any justification approached, seized and punched plaintiff JOEL HODGES numerous times. Plaintiff was then placed in excessively tight handcuffs and taken to an NYPD precinct. Plaintiff was thereafter arraigned on the false charges that were fabricated by the defendant officers to cover up their acts of brutality, and thereafter detained for several days until his release by a Criminal Court Judge. Plaintiff HODGES was maliciously prosecuted by defendants until on or about February 26, 2007, when all charges were dismissed and sealed via the motion of the New York County District Attorney's Office.

18. All of the above occurred while NYPD officers failed to intervene in the illegal conduct described herein.

19. As a result of the foregoing, plaintiffs BRIAN AMBOS and JOEL HODGES sustained, *inter alia*, physical injuries, emotional distress, embarrassment, and humiliation, anxiety, mental anguish, deprivation of their liberty, violation of constitutional rights, and special

damages.

**Federal Claims**

**AS AND FOR A FIRST CAUSE OF ACTION  
(Deprivation of Rights under 42 U.S.C. § 1983)**

20. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "19" with the same force and effect as if fully set forth herein.

21. All of the aforementioned acts of defendants, their agents, servants and employees were carried out under the color of state law.

22. All of the aforementioned acts deprived plaintiffs BRIAN AMBOS and JOEL HODGES of the rights, privileges and immunities guaranteed to citizens of the United States by the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. §1983.

23. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, with the entire actual and/or apparent authority attendant thereto.

24. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and the rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

25. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Excessive Force under 42 U.S.C. § 1983)**

26. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "25" with the same force and effect as if fully set forth herein.

27. The level of force employed by defendants was excessive, objectively unreasonable and otherwise in violation of plaintiffs BRIAN AMBOS and JOEL HODGES's constitutional rights.

28. As a result of the aforementioned conduct of defendants, plaintiffs BRIAN AMBOS and JOEL HODGES's constitutional right to be free from excessive force was violated and they sustained physical injuries.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Failure to Intervene under 42 U.S.C. § 1983)**

29. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "28" with the same force and effect as if fully set forth herein.

30. Defendants had an affirmative duty to intervene on behalf of plaintiffs BRIAN AMBOS and JOEL HODGES, whose constitutional rights were being violated in their presence by other officers.

31. The defendants failed to intervene to prevent the unlawful conduct described herein.

32. As a result of the foregoing, plaintiffs BRIAN AMBOS and JOEL HODGES's liberty was restricted for an extended period of time, they were put in fear of their safety, and they were humiliated and subjected to handcuffing and other physical restraints, without probable cause.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(False Arrest under 42 U.S.C. § 1983)**

33. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "32" with the same force and effect as if fully set forth herein.

34. The defendants unlawfully imprisoned and arrested plaintiffs BRIAN AMBOS and JOEL HODGES against their will and in the absence of probable cause or privilege.

35. As a result of the foregoing, plaintiffs BRIAN AMBOS and JOEL HODGES were handcuffed, held in a cell, and otherwise deprived of their right to be free from false arrest.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
**(Supervisory Liability under 42 U.S.C. § 1983)**

36. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "35" with the same force and effect as if fully set forth herein.

37. The supervisory defendants personally caused plaintiffs' constitutional injuries by being deliberately or consciously indifferent to the rights of others in failing to properly supervise and train their subordinate employees.

**AS AND FOR A SIXTH CAUSE OF ACTION**  
**(Malicious Prosecution under 42 U.S.C. § 1983)**

38. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "37" with the same force and effect as if fully set forth herein.

39. Defendants initiated, commenced and continued a malicious prosecution against plaintiffs BRIAN AMBOS and JOEL HODGES by providing false and/or misleading information to the New York County District Attorney's office.

40. The aforesaid prosecutions terminated in favor of plaintiffs BRIAN AMBOS and JOEL HODGES when they were dismissed and sealed on or about February 26, 2007.



**AS AND FOR A SEVENTH CAUSE OF ACTION**  
**(Deprivation of Substantive Due Process under 42 U.S.C. § 1983)**

41. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "40" with the same force and effect as if fully set forth herein.

42. The defendants conduct herein was an abuse of executive power so clearly unjustified by any legitimate objective of law enforcement as to be barred by the Fourteenth Amendment.

43. As a result of the foregoing, plaintiffs BRIAN AMBOS and JOEL HODGES were deprived of their liberty and right to substantive due process, causing severe and permanent emotional and physical injuries.

**AS AND FOR AN EIGHTH CAUSE OF ACTION**  
**(Municipal Liability under 42 U.S.C. § 1983)**

44. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "43" with the same force and effect as if fully set forth herein.

45. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

46. The aforementioned customs, policies, usages, practices, procedures and rules of the City of New York Police Department included, but were not limited to, unlawfully stopping, seizing, and using excessive force against innocent citizens, and then committing perjury and/or manufacturing evidence in an effort to convict such individuals. In addition, the City of New York engaged in a policy, custom or practice of inadequate screening, hiring, retaining, training and supervising its employees, which was the moving force behind the violation of plaintiffs BRIAN AMBOS and JOEL HODGES'S rights as described herein. As a result of the failure of



the City of New York to properly recruit, screen, train, discipline, and supervise its officers, including the individual defendants, defendant CITY OF NEW YORK has tacitly authorized, ratified, and has been deliberately indifferent to, the acts and conduct complained of herein.

47. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York Police Department constituted deliberate indifference to the safety, well-being and constitutional rights of plaintiffs BRIAN AMBOS and JOEL HODGES.

48. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the direct and proximate cause of the constitutional violations suffered by plaintiffs BRIAN AMBOS and JOEL HODGES as alleged herein.

49. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the moving force behind the Constitutional violations suffered by plaintiffs BRIAN AMBOS and JOEL HODGES as alleged herein.

50. As a result of the foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department, plaintiffs BRIAN AMBOS and JOEL HODGES were unlawfully beaten, detained, incarcerated, prosecuted, and otherwise subjected to physical abuse.

51. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating plaintiffs BRIAN AMBOS and JOEL HODGES'S constitutional rights.

52. All of the foregoing acts by defendants, defendants deprived plaintiffs BRIAN AMBOS and JOEL HODGES of federally protected rights, including, but not limited to, the

right:

- A. Not to be deprived of liberty without due process of law;
- B. To be free from malicious abuse of process;
- C. To be free from false arrest;
- D. To be free from malicious prosecution;
- E. To receive equal protection under law; and
- F. To be free from the use of excessive force and/or the failure to intervene..

53. As a result of the foregoing, plaintiffs BRIAN AMBOS and JOEL HODGES are entitled to compensatory damages in an amount to be fixed by a jury, and are further entitled to punitive damages against the individual defendants in an amount to be fixed by a jury.

**Supplemental State Law Claims**

54. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "53" with the same force and effect as if fully set forth herein.

55. Within ninety (90) days after the claim herein accrued, plaintiffs BRIAN AMBOS and JOEL HODGES duly served upon, presented to and filed with the City of New York, a Notice of Claim setting forth all facts and information required under the General Municipal Law 50-e.

56. The City of New York has wholly neglected or refused to make an adjustment or payment thereof and more than thirty (30) days have elapsed since the presentation of such claim as aforesaid.

57. The action was commenced within one (1) year and ninety (90) days after the cause of action herein accrued.

58. Plaintiffs BRIAN AMBOS and JOEL HODGES have complied with all

conditions precedent to maintaining the instant action.

59. Their action falls within one or more of the exceptions as outlined in C.P.L.R. 1602.

**AS AND FOR A NINTH CAUSE OF ACTION**  
**(Negligent Screening, Hiring, and Retention under the laws of the State of New York)**

60. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraph numbered "1" through "59" with the same force and effect as if fully set forth herein.

61. Upon information and belief, defendant City of New York failed to use reasonable care in the screening, hiring and retention of the aforesaid defendants who conducted and participated in the arrest of plaintiffs BRIAN AMBOS and JOEL HODGES.

62. Defendant City of New York knew, or should have known in the exercise of reasonable care, the propensities of the individual defendants to engage in the wrongful conduct heretofore alleged in the Complaint.

**AS AND FOR A TENTH CAUSE OF ACTION**  
**(Negligent Training and Supervision under the laws of the State of New York)**

63. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "62" with the same force and effect as if fully set forth herein.

64. Upon information and belief the defendant City of New York failed to use reasonable care in the training and supervision of the aforesaid defendants who conducted and participated in the arrest of plaintiffs BRIAN AMBOS and JOEL HODGES.

**AS AND FOR AN ELEVENTH CAUSE OF ACTION**  
**(Negligence under the laws of the State of New York)**

65. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "64" with the same force and effect as if fully set forth herein.

66. Plaintiffs' injuries herein were caused by the carelessness, recklessness and negligence of the defendant City of New York and its employees and agents, who were on duty and acting in the scope of their employment when they engaged in the wrongful conduct described herein.

**AS AND FOR A TWELFTH CAUSE OF ACTION**  
**(False Arrest under the laws of the State of New York)**

67. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "66" with the same force and effect as if fully set forth herein.

68. Defendants arrested plaintiffs BRIAN AMBOS and JOEL HODGES without probable cause.

69. Plaintiffs were detained against their will for an extended period of time and subjected to physical restraints.

70. As a result of the aforementioned conduct, plaintiffs BRIAN AMBOS and JOEL HODGES were unlawfully imprisoned in violation of the laws of the State of New York.

71. As a result of the aforementioned conduct, plaintiffs BRIAN AMBOS and JOEL HODGES suffered physical and mental injury, together with embarrassment, humiliation, shock, fright, and loss of freedom.

**AS AND FOR A THIRTEENTH CAUSE OF ACTION**  
**(Respondeat Superior liability under the laws of the State of New York)**

72. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "71" with the same force and effect as if fully set forth herein.

73. Defendant City of New York is vicariously liable for the acts of its employees and agents who were on duty and acting in the scope of their employment when they engaged in the wrongful conduct described herein.

74. As a result of the foregoing, BRIAN AMBOS and JOEL HODGES are entitled to compensatory damages in amount to be fixed by a jury, and are further entitled to punitive damages against the individual defendants in an amount to be fixed by a jury, plus reasonable attorney's fees, costs and disbursements of this action.

**AS AND FOR A FOURTEENTH CAUSE OF ACTION**  
**(Malicious Prosecution under laws of the State of New York)**

75. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "74" with the same force and effect as if fully set forth herein.

76. Defendants initiated, commenced, and continued criminal proceedings against plaintiffs by falsely reporting the events of November 10, 2006 to the New York County District Attorney's Office.

77. Defendants caused plaintiffs BRIAN AMBOS and JOEL HODGES to be prosecuted on criminal charges without any probable cause until the charges were dismissed.

78. As a result of the aforementioned conduct, plaintiffs BRIAN AMBOS and JOEL HODGES suffered severe emotional distress, physical and mental injury, together with embarrassment, humiliation, shock, fright, and loss of freedom

**AS AND FOR A FIFTHTEENTH CAUSE OF ACTION**  
**(Assault under the laws of the State of New York)**

79. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "78" with the same force and effect as if fully set forth herein.

80. As a result of the foregoing, plaintiffs BRIAN AMBOS and JOEL HODGES were placed in apprehension of imminent harmful and offensive bodily contact.

81. As a result of defendants' conduct, plaintiffs BRIAN AMBOS and JOEL HODGES have suffered physical pain and mental anguish, together with shock, fright,

apprehension, embarrassment, and humiliation.

**AS AND FOR A SIXTEENTH CAUSE OF ACTION**  
**(Battery under the laws of the State of New York)**

82. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "81" with the same force and effect as if fully set forth herein.

83. Defendants made offensive contact with plaintiffs without privilege or consent.

84. As a result of defendants' conduct, plaintiffs BRIAN AMBOS and JOEL HODGES have suffered physical pain and mental anguish, together with shock, fright, apprehension, embarrassment, and humiliation.

**AS AND FOR A SEVENTEENTH CAUSE OF ACTION**  
**(Intentional Infliction of Emotional Distress under the laws of the State of New York)**

85. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs numbered "1" through "84" with the same force and effect as if fully set forth herein.

86. The aforementioned conduct was extreme and outrageous, and exceeded all reasonable bounds of decency.

87. The aforementioned conduct was committed by defendants while acting within the scope of their employment by defendant CITY OF NEW YORK.

88. The aforementioned conduct was committed by defendants while acting in furtherance of their employment by defendant CITY OF NEW YORK.

89. The aforementioned conduct was intentional and for the sole purpose of causing severe emotional distress to plaintiffs BRIAN AMBOS and JOEL HODGES.

90. As a result of the aforementioned conduct, plaintiffs BRIAN AMBOS and JOEL HODGES suffered severe emotional distress, physical and mental injury, together with embarrassment, humiliation, shock, fright, and loss of freedom.

Attorneys for Plaintiffs BRIAN AMBOS  
and JOEL HODGES

BRETT H. KLEIN

By:

LEVENTHAL & KLEIN, LLP  
45 Main Street, Suite 230  
Brooklyn, New York 11201  
(718) 722-4100

Dated: Brooklyn, New York  
August 26, 2008

WHEREFORE, plaintiffs BRIAN AMBOS and JOEL HODGES demand judgment and  
pray for the following relief, jointly and severally, against the defendants:

(A) full and fair compensatory damages in an amount to be determined by a jury;

(B) punitive damages in an amount to be determined by a jury;

(C) reasonable attorney's fees and the costs and disbursements of this action; and

(D) such other and further relief as appears just and proper.



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08 CV 1276 (VM)

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-against-

CITY OF NEW YORK, DENNIS BRADLEY, UNDERCOVER  
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and in their official capacities, (the names John and  
Jane Doe being fictitious, as the true names are presently  
unknown),

Defendants.

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**AMENDED COMPLAINT**

LEVENTHAL & KLEIN, LLP  
Attorneys for Plaintiffs Brian Ambos and Joel Hodges  
45 Main Street, Suite 230  
Brooklyn, New York 11201  
(718) 722-4100